

BEFORE THE
GOVERNING BOARD
ALPINE UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondents Identified in
Appendix A.

OAH No. 2012030674

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 19, 2012, in Alpine, California.

Cathie Fields, Atkinson, Andelson, Loya, Ruud & Romo, represented Alpine Union School District (District).

Joshua Baskin, Skipper, Singer & Associates, represented the respondents.

Oral and documentary evidence was received and the matter was submitted on April 19, 2012.

FACTUAL FINDINGS

Jurisdiction

1. Tom Pellegrino, Superintendent made and filed the accusation in his official capacity as the District's Superintendent.

2. Respondents are identified on Appendix A, attached hereto and by this reference incorporated herein. All respondents are certificated employees of the District.

3. On March 1, 2012, the Board of Trustees of the Alpine Union School District (Board) adopted a resolution which reduced particular kinds of services and directed the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution identified 5.72 FTEs to be reduced.

Layoff Determinations

4. Consistent with the Board's Resolution, the District identified certificated employees for layoff. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

5. The District considered attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered. The District must issue final layoff notices before May 15, and when it does so it will take into account any additional attrition that has occurred. After that, further attrition will allow the District to rehire laid off employees. A question arose during the hearing regarding the vacancies created by the attrition which has occurred since March 15, but the district is not required to consider those vacancies for purposes of this hearing. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627.)

6. On or before March 15, 2012, the District timely served on Respondents a written notice that the Superintendent had recommended that their services would be terminated at the close of the current school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

7. Twelve employees were noticed for layoff, only three requested a hearing and are identified in Appendix A.

8. An accusation was served on each respondent. No evidence was introduced demonstrating that all prehearing jurisdictional requirements were not met.

Final Layoff List

9. Deann Jeffreys, Director of Human Resources and Pupil Services, testified about the District's financial crisis and explained that the District performed a "conservative layoff" this year, trying to identify only those employees it truly had to reduce at this juncture. Although she admitted the District will still have reserves for operating expenses next year, nothing requires a district to use them to preserve positions as Boards are required to be fiscally responsible.

10. The District is not retaining any employee with less seniority to perform a service that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. The decision to reduce or discontinue a particular kind of service is matter reserved to the district’s discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2012-2013 school year. The cause relates solely to the financial welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The District has identified the certificated employees who are providing the particular kinds of services that the Board directed be reduced or discontinued. It is recommended that the Board give respondents notice before May 15, 2012, that their services will not be required by the District for the school year 2012-13.

RECOMMENDATION

It is recommended that the Board give notice to the respondents whose names are set forth below that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2012-2013 school year.

DATED: April 22, 2012

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

The following certificated personnel will receive a layoff notice:

Karen Hohimer

Louise Sager

Bridget Wetton